

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

THE UNITED STATES OF AMERICA *et al.*,
ex rel., MAX BENNETT,

Plaintiff,

v.

ABIOMED, INC., a Delaware
corporation.

Defendant.

CIVIL ACTION NO.
13-cv-12277-IT

**MOTION OF CLYDE D. BERGSTRESSER, RICHARD J. ZABBO AND THE FIRM OF
BERGSTRESSER & POLLOCK P.C. TO WITHDRAW AS COUNSEL FOR THE
PLAINTIFF**

Clyde D. Bergstresser, Richard J. Zabbo, and the law firm of Bergstresser & Pollock, P.C., hereby move this Honorable Court in accordance with Local Rule 83.5.2(c)(2) to withdraw as counsel in the above-captioned matter.

Undersigned counsel state that in light of the recent developments set forth below, we move the court to allow us to withdraw from representation of the Plaintiff. The undersigned first entered their appearances in this 2013 case three weeks ago on September 11, 2018, with the express understanding and agreement of the Plaintiff and his Lead Counsel, Royston Delaney, who has been Lead Counsel since 2014, that we were entering our appearances only as co-counsel to assist Lead Counsel with trial preparation and trial, and not to take the case over as lead or sole counsel. Attorney Delaney represented the Plaintiff in the False Claims Act claim out of which this retaliation claim arose and had extensive knowledge of the facts and

the law. We made it clear to the Plaintiff and Attorney Delaney that we had no experience representing a plaintiff in a False Claims Act filing or a retaliation claim arising therefrom and would be relying on Mr. Delaney for his knowledge of the facts of this case and the applicable law.

On or about September 21, 2018, after we had been entered in the case for only ten days, Attorney Delaney informed us of his intention to seek to withdraw from the case, citing a breakdown in the attorney-client relationship. This was unexpected. Prior to entering our appearances, we had been assured by Lead Counsel and the Plaintiff that the issue that apparently triggered the breakdown in the relationship was ancient history and no longer an issue. Had we been aware that there was the potential for the conflict that has arisen and the potential for Royston Delaney filing a motion to withdraw we would never have agreed to enter our appearance. From our discussions with both Mr. Delaney and the Plaintiff, we do not believe the facts asserted herein are in dispute. Since we became aware of this motion there have been communications with Mr. Delaney that have resulted in a breakdown in this firm's relationship with Mr. Delaney as well as it relates to the above claim.

Rule 1.16(b)(7) permits a lawyer to withdraw from representing a client for good cause shown. At this juncture, given the motion to withdraw by Mr. Delaney and the breakdown in the relationship with Mr. Delaney and the dramatic change in circumstances that were the foundation for our appearance we must also seek to withdraw. As stated above neither Mr. Bergstresser nor Mr. Zabbo have a prior history with this case or the underlying False Claims Act case out of which it arises

and we do not specialize in or have prior experience handling claims under the False Claims Act or retaliation cases arising therefrom. We only very recently filed our appearance under very different circumstances and the representations made by Mr. Delaney and the Plaintiff upon which we relied in filing our appearance are no longer accurate. If this motion is allowed, we are prepared to waive any and all claims to legal fees for work performed on this matter.

WHEREFORE, for the reasons stated herein, we respectfully request that the Court grant our motion. We further ask the Court to extend all existing scheduling order deadlines by 120 days to give the plaintiff the opportunity to secure successor counsel.

/s/ Clyde D. Bergstresser
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/s/ Richard J. Zabbo
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Local Rule 7.1(a) Certification

The undersigned hereby certify that they have conferred with the plaintiff, with Royston H. Delaney, Esq., Charles Kester, Esq. and Ken M. Bello, Esq., in good faith in an attempt to narrow or resolve the issues raised in the instant motion.

/s/ Clyde D. Bergstresser

/s/ Richard J. Zabbo

Certificate of Service

I hereby certify that a true copy of the above document was served upon the attorneys of record for each other party by electronic means [ECF], and on the plaintiff via email and First Class Mail.

/s/ Richard J. Zabbo